



Comptroller General
of the United States

Washington, D.C. 20548

McArthur 147162

Decision

Matter of: Noise Cancellation Technologies, Inc.--
Reconsideration

File: B-246476.3

Date: July 22, 1992

DECISION

Noise Cancellation Technologies, Inc. (NCT) requests reconsideration of our decision, Noise Cancellation Technologies, Inc., B-246476; B-246476.2, Mar. 9, 1992, 92-1 CPD ¶ 269, dismissing a portion of its protest against the award of a contract to Barron Associates Incorporated (BAI) in response to topic N91-129, issued by the Department of the Navy under the Department of Defense (DOD) Small Business Innovation Research (SBIR) program for fiscal year 1991. We dismissed the protest because NCT was not an interested party.

We deny the request for reconsideration.

The SBIR program was established under the Small Business Innovation Development Act (Innovation Act), 15 U.S.C. § 638 (1988), which requires federal agencies to reserve a portion of their research efforts and authorizes them to award "funding agreements," in the form of contracts, grants, or cooperative agreements, to small businesses.

On October 1, 1990, DOD issued program solicitation No. 91.1, for the purpose of encouraging scientific and technical innovation in a variety of topic areas. The solicitation included 290 topics submitted by the Navy, including topic N91-129, "Active Noise Cancellation," seeking a method ". . . [to] replace passive mounting fixtures with active mounts." The agency received 12 responses to topic N91-129 by the closing date of January 11, 1991, and submitted them to its evaluation team; that team scored the proposal submitted by BAI higher than the other proposals, 99 of 100 potential points versus 76 points for its nearest competitor. NCT ranked seventh, with 46.7 points.

In its initial protest, filed with this Office on October 30, 1991, NCT argued that the agency had not evaluated its proposal in accordance with the selection criteria established for the program. We denied the initial protest

since the record showed that the evaluation was reasonable and that the agency complied with applicable regulations and solicitation provisions.

Based upon its examination of the agency report, NCT had also filed a supplemental protest, contending that the electronic noise cancellation technology offered by BAI did not constitute "active noise cancellation" as called for in the solicitation; therefore, NCT alleged that the agency must have changed its requirements without informing NCT and giving it the opportunity to compete on the basis of the change. Because there had been no challenge to the proposals of the five other offerors who ranked higher in the evaluation than the protester, we found that NCT was not an interested party for the purpose of challenging the acceptability of the BAI proposal. We therefore dismissed NCT's supplemental protest.

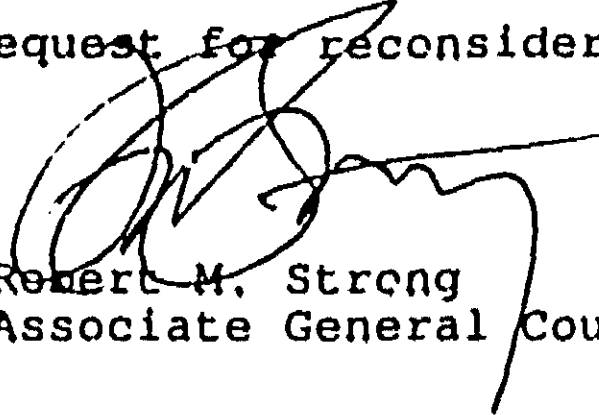
On reconsideration, NCT is again arguing that the agency, without amending the solicitation, must have modified its requirements in order to have found the BAI proposal responsive. NCT argues that the relative ranking of its proposal is irrelevant where as here a protester seeks cancellation of the solicitation and an opportunity to submit a new proposal. NCT states that it was "careful to couch" its filings to avoid the allegation that the BAI proposal did not comply with solicitation requirements.

Regardless of how the protester characterizes its argument, NCT's protest essentially constituted a challenge to the acceptability of the highest ranked proposal, submitted by BAI. Under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. 4 C.F.R. § 21.0(a) and 21.1(a) (1991); State Technical Inst. at Memphis, 67 Comp. Gen. 236 (1988), 88-1 CPD ¶ 135. A protester does not become "interested" merely by seeking cancellation and resolicitation. See Flight Resources, Inc., 65 Comp. Gen. 619 (1986), 86-1 CPD ¶ 518. Therefore, because there had been no challenge to the five other offerors who ranked higher than NCT, we see no basis for changing our conclusion that NCT was not an interested party to challenge the award. In short, as the seventh-ranked offeror, the protester's interest in the award process is so remote that no useful purpose would be served by consideration of the protest issue.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). NCT's mere repetition of arguments made during the original protest and

mere disagreement with our decision do not meet this standard. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.



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